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Paper No. 3

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OFFICE OF PETITIONS

In re Application of	:	
Mingming Fang	:	
Application No. 09/975,335	:	DECISION GRANTING
Filed: October 11, 2001	:	PETITION
Attorney Docket No. 00042	:	

This is a decision on the petition filed March 25, 2002, requesting that the above-identified application be accorded a filing date of October 11, 2001, rather than the presently accorded date of October 10, 2001. The petition is properly treated as a petition under 37 CFR 1.10(c).

Petitioner alleges that the application was deposited in Express Mail Service on October 11, 2001. In support, a statement from Joan Howard, a U. S. Postal Service employee, accompanies the petition stating that the correct date-in should have been October 11, 2001. However, this statement is unacceptable. MPEP 513 states, in part:

A petition alleging that the USPS erred in entering the "date-in" will be denied if it is supported only by evidence (other than from the USPS) which was:

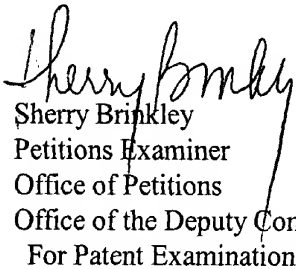
- (A) created prior to the deposit of the correspondence as "Express Mail" with the USPS (e.g., an application transmittal cover letter, or a client letter prepared prior to the deposit of the correspondence); or
- (B) **created more than one business day after the deposit of the correspondence as "Express Mail" (e.g., an affidavit or declaration prepared more than one business day after the correspondence was deposited with the USPS as "Express Mail").**

The statement from Joan Howard, a USPS Sales Associate, is dated March 15, 2002, five months after the deposit of the application papers as "Express Mail." Hence, the evidence provided does not comply with the requirements set forth in MPEP 513.

Nevertheless, the Office has obtained records from the USPS corroborating petitioner's allegations that the application papers were, in fact, deposited as "Express Mail" on October 11, 2001 (copy enclosed). In view thereof, the petition is **GRANTED**.

This application file is being forwarded to the Office of Initial Patent Examination Division for further **processing with a filing date of October 11, 2001**. Thereafter, the application file will be forwarded to Technology Center 3723 for examination in due course.

Telephone inquiries concerning this matter may be directed to Marianne Morgan at (703) 306-3475.


Sherry Brinkley
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
For Patent Examination Policy

ATTACHMENT: Copy of USPTO's USPS Express Mail Information Database